

USA

File: Federal Tort Claims Act

8 December 1981

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting re Legislation to Amend Federal Tort Claims Act (FTCA)

DATE/PLACE/TIME: 8 December 1981, 7D00 Hqs., 1400 - 1440

PARTICIPANTS: Stanley Sporkin, General Counsel

John J. Farley III, Assistant Director,
Torts Branch, Civil Division,
Department of Justice

John Lodge Euler, Trial Attorney,
Torts Branch, Civil Division,
Department of Justice

[redacted] Assistant General Counsel

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[redacted] Office of General Counsel

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1. Mr. Sporkin expressed three major concerns with current legislation to amend the Federal Tort Claims Act:

- individual government employees should be protected from personal liability for all actions they take within the scope of their employment, including costs of defense.
- government officials should not be diverted from the public's business by plaintiffs who tie up their time defending tort claims.
- government actions against a person, such as regulatory actions to prevent or punish violations of securities laws, should not be held off or interfered with by tort claims made by the person subject to the government action.

2. To deal with his concerns, Mr. Sporkin suggested:

- a government sponsored self-insurance program under which employees could buy insurance through biweekly payroll deductions to protect them against liability for their official actions.
- an amendment to the FTCA to limit discovery against the U.S. and its officials involved in tort claims.

--an amendment to the FTCA to assure that federal actions against a person, such as regulatory actions, will proceed to conclusion before tort claims by that person arising out of the same subject matter will be heard.

3. To bring pressure on the Congress to act quickly to relieve federal employees from personal liability for their official actions, Mr. Sporkin suggested that the Department of Justice should prepare a petition to Congress for the signature of federal agency general counsels and other senior officials.

4. Mr. Farley advised that the Department of Justice plans, at an appropriate time in the legislative process, to add a catch-all provision to the FTCA legislation which would authorize agency heads to indemnify agency employees sued personally for their official actions. This would assure that any new theories the law develops for personal liability of government employees for their official actions will not recreate the problems FTCA legislation is intended to remedy.

5. After discussion of the legislation, Mr. Sporkin's suggestions, and Mr. Farley's plans, Mr. Sporkin and Mr. Farley agreed that:

--The Department of Justice will push hard for the indemnification catch-all provision at the appropriate time in the legislative process.

--CIA will not engage in any high profile legislative activities concerning FTCA legislation, but will, through appropriate quiet efforts with its contacts on the Hill, express its strong support for the Justice Department FTCA legislation (S. 1775).

--CIA will provide whatever assistance the Department of Justice requests to help move FTCA legislation towards enactment.

/s/

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